

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**MAILED**

**MAR 22 1996**

*Ex parte* MICHAEL H. WEST

PAT.&T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Appeal No. 94-0791  
Application 07/577,020<sup>1</sup>

**ON BRIEF**

Before GOLDSTEIN, JOHN D. SMITH and PAK, *Administrative Patent Judges*.

GOLDSTEIN, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This appeal is from the examiner's final rejection of claims 10-18. Claim 19 has been allowed. Illustrative claim 10 is reproduced below:

10. A dispersant pesticide composition which comprises
  - (1) a salt or partial salt of
    - (a) an alkyl substituted amine and

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<sup>1</sup> Application for patent filed September 4, 1990.

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(b) a phosphonic acid  
and  
(2) a pesticide.

References relied on by the examiner on appeal are:

Ward	4,950,685	Aug. 21, 1990
Lehmann et al. (Lehmann)	5,109,019	Apr. 28, 1992

Butcher et al. (Butcher) CA87:103500p, Vol. 87, (1977)

Publications referred to in the following opinion are:

Morrison et al. (Morrison), "Organic Chemistry," pp. 518 and 553, 1959

Fieser et al. (Fieser) "Organic Chemistry," 3rd Ed., pp. 224 and 228, 1956

Claims 10 and 13 has been finally rejected under 35 U.S.C. § 102 as being anticipated by Lehmann, and all of the appealed claims have been finally rejected under 35 U.S.C. § 103 as being unpatentable over the combined teachings of Lehmann, Ward and Butcher. We shall not affirm these rejections.

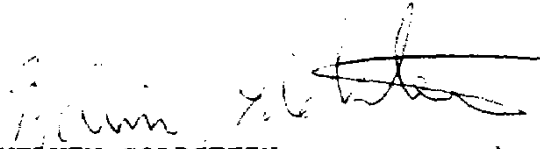
All of the rejections are based on the fallacy that "quaternary amines are by definition alkyl substituted amines." There are no such things as "quaternary amines." Exhaustive alkylation of amines yields quaternary ammonium salts, which can be converted to the strong base, quaternary ammonium hydroxide. There are only quaternary ammonium compounds and not "quaternary amines." This is amply illustrated by reference to either of the text books in fundamental organic chemistry which we have cited to complete the record.

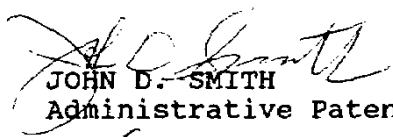
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Both of these texts list only primary, secondary and tertiary amines, and in a separate section or subsection, discuss the formation of quaternary ammonium compounds from amines, in particular tertiary amines, as a distinct type of compound having distinct properties. Thus, the examiner's rejection is based on clear error.

The decision of the examiner is reversed.

REVERSED

  
MELVIN GOLDSTEIN )  
Administrative Patent Judge )

  
JOHN D. SMITH )  
Administrative Patent Judge )

  
CHONG K. PAK )  
Administrative Patent Judge )

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